

JACK J. BOLTAX

California State Bar No. 105490

1202 Kettner Boulevard

Suite 6200

San Diego, CA 92101

Telephone: (619) 233-5129

e-mail: jboltaxlaw@gmail.com

Attorney for HUGO ISRAEL RODRIGUEZ-ARZATE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HON. JEFFREY T. MILLER)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HUGO ISRAEL RODRIGUEZ-ARZATE,

Defendant.

Case No. 07-CR-3218-JM

DEFENDANT'S MOTION TO
COMPEL DISCOVERY; 2) FOR
JOINDER AND 3) FOR LEAVE TO
FILE FURTHER MOTIONS

DATE: January 11, 2008

TIME: 11:00 a.m.

DEPT: Hon. Jeffrey T. Miller

I

STATEMENT OF THE CASE

HUGO ISRAEL RODRIGUEZ-ARZATE and co-defendants Dale Stamper and Oscar Eduardo Prudencio-Cuevo are charged in Indictment No. 07CR3218JM, dated November 23, 2007, with the following violations of law.

Counts I, III and V - A violation of 18 USC §1324(a)(2)(B)(11), and 18 USC §2, occurring on or about November 15, 2007.

Counts II, IV and VI - A violation of 8 USC §1324(a)(1)(A)(ii) and (v)(II), occurring on or about November 15, 2007.

To date, approximately 141 pages of discovery were made available to and obtained by Mr. Rodriguez-Arzate's attorney on December 26, 2007. A motions hearing is currently set for January 11, 2007, at 11:00 a.m., before Judge Jeffrey T. Miller.

I

DEFENDANT IS ENTITLED TO RULE 16 DISCOVERY

Defendant hereby requests that the government disclose to him all prior statements within the meaning of F.R.C.P. 16, subdivision (A), his prior record pursuant to Rule 16, subdivision (B), any other documents or tangible objects described in Rule 16, subdivision (C), and the summary of any experts the government intends to use at trial as experts pursuant to Rule 16, subdivision (E).

II

DEFENDANT IS ENTITLED TO EXCULPATORY EVIDENCE

The government is obligated to disclose exculpatory evidence. (Brady v. Maryland, 373 U.S. 83 (1963)) The defendant realizes that the Brady rule is not a discovery rule. (See United States v. Beasley, 576 F.2d 626, 630 (5th Cir. 1978).) Nevertheless, Brady requires the government to furnish the defendant with all exculpatory information in its possession or reasonably available to it. (Brady v. Maryland, supra, 373 U.S. at 87.) This request includes all information, including a record of prior conviction or prior bad acts, which could be used to impeach any prosecution witness who the government expects will testify at trial.

III

THE COURT SHOULD ORDER PRETRIAL JENCKS DISCOVERY

The defendant is further entitled to witness statements in accordance with Title 18 USC section 3500(a), (b) and (c), the Jencks Act. Notes taken by a federal agent or prosecutor during the statement of any witness are discoverable if the notes were read back to the witness and adopted. (Campbell v. United States, 373 U.S. 487, 492 (1963); United States v. Sebastian, 497 F.2d 1267 (2d Cir. 1974) encourages pretrial Jencks hearings. United States v. Percevault, 490 F.2d 126, 132 (2d Cir. 1974) suggests that at such hearings, district judges should establish “a timetable for discovery and for reaching agreements on the scope of disclosure.”

///

///

IV**MR. RODRIGUEZ-ARZATE JOINS THE
MOTIONS OF THE CO-DEFENDANT**

Hugo Israel Rodriguez-Arzate requests that this court let him join in any and all motions that are made by the co-defendants at the January 11, 2008, motions hearing, including the motion for discovery and amended motion for discovery previously filed by codefendant Dale Stamper.

V**MR. RODRIGUEZ-ARZATE REQUESTS THIS COURT
GRANT HIM LEAVE TO FILE FURTHER MOTIONS**

Discovery consisting of 141 pages was made available for and received by counsel for Mr. Rodriguez-Arzate on December 26, 2007. As of the preparation of this motion, counsel has not had an adequate opportunity to review this discovery. Therefore, we request the court grant us leave to file additional motions as we deem necessary upon completion of our review of this discovery and any additional discovery.

Date: December 28, 2007

Respectfully submitted,

/s/ Jack J. Boltax
JACK J. BOLTAX, Attorney for Defendant
HUGO ISRAEL RODRIGUEZ-ARZATE

I:\Rodriguez-Arzate.MTC 122807.wpd

CERTIFICATE OF SERVICE

Counsel for Defendant certifies that the foregoing pleading:

NOTICE OF MOTION AND MOTION TO 1) COMPEL DISCOVERY, 2) FOR
LEAVE TO FILE FURTHER MOTION, AND 3) FOR JOINDER

is true and accurate to the best of his information and belief, and that a copy of the foregoing
document has been served this day upon:

MAILING INFORMATION FOR CASE NO. 07-CR-3218-JM

1. Electronic Mail Notice List

The following are those who are currently on the list to receive email notices for this case.

Aaron B. Clark aaron.clark@usdoj.gov

Date: December 28, 2007

/s/ Jack J. Boltax

JACK J. BOLTAX

Attorney for Defendant

HUGO ISRAEL RODRIGUEZ-ARZATE

California State Bar No. 105490

1202 Kettner Boulevard, Suite 6200

San Diego, CA 92101

Telephone: (619) 233-5129

e-mail: jboltaxlaw@gmail.com